IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11002 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SMT. S.B. KAPDI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11002 of 2002

MR IS SUPEHIA for Petitioner No. 1

MS REETA CHANDARANA, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 29/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner has challenged the resolution dated 30th September, 2002 passed by the respondents by which the pay-fixation of the petitioner is sought to be corrected and the

petitioner is sought to be placed in the pay-scale of Rs.160-225 (pre-revised) with effect from 12th March 1973 instead of the scale of Rs.200-340 as was given to her. The petitioner has also prayed for a declaration that she was rightly placed in the pay-scale of Rs.200-340 with effect from 12th March 1973 as revised from time to time. The petitioner has also challenged the resolution dated 18th July 1996 by which the pay of the petitioner is fixed in the revised scale of Rs.5500-9000.

2. The case of the petitioner as emerging from the petition is that she was appointed in the Government Mental Hospital, Ahmedabad on the post of Linen Keeper on 12th March 1973. Her pay was fixed in the scale of Rs.200-340 on 12th March 1973. It is also the case of the petitioner that she continued to receive the periodical pay revisions in the scales corresponding to the pre-revised scale of Rs.200-340. The petitioner, further submits that suddenly the respondents by their impugned order dated 7th August 1996 sought to place the petitioner in the lower scale of Rs.160-225 with effect from 12th March 1973 without following any formalities or without hearing the petitioner. The petitioner had thereafter approached this Court by filing Special Civil Application No.6371 of 1996 in which by the order dated 18th September 1996, this Court was pleased to quash and set aside the said order of 7th/19th August 1996 only on the ground that the said order was passed without affording an opportunity of being heard to the petitioner. It is not in dispute that subsequent to passing of the said order dated 18th September 1996, by this Court in Special Civil Application No.6371 of 1996, the petitioner was given an opportunity to represent her case and the respondents thereafter passed fresh order dated 30th September 2002 by which the earlier stand was reiterated and it was decided that the petitioner was wrongly placed in the scale of Rs.200-340 with effect from 12th March, 1973. The respondents have also sought recovery of the excess payment made from the petitioner.

3. The petitioner has, therefore, once again approached this Court questioning the action of the respondent in placing the petitioner in lower pay-scale of Rs.160-225 with effect from 12th March, 1973 as also challenged the authority of the respondents to effect recovery of the excess payment made at such a distant point of time.

4. The respondents have filed an affidavit in reply and have pointed out that placing the petitioner in the scale of Rs.200-340 was a mistake since the pay-scale of

the Linen Keeper in the Mental Hospital at Ahmedabad was that of Rs.160-225 when the petitioner was appointed to the said post on 12th March 1973. It is further pointed out that the pay-scale of Rs.200-340 was prescribed for the post of Senior Linen Keeper and since admittedly the petitioner was appointed to the post of Linen Keeper and not to the post of Senior Linen Keeper, the petitioner could not have been given the pay-scale of Rs.200-340 and the subsequent pay fixation pursuant to pay revisions was also therefore erroneous. It is further submitted on behalf of the respondents that when the mistake came to the notice of the respondent, the same was sought to be rectified and though on earlier occasion, the order of correcting the pay fixation was passed ex-parte, after the order passed by this Court striking down the said order, the respondent had given sufficient opportunity to the petitioner to be heard and had thereafter passed fresh order which is in accordance with the law and therefore need not be disturbed.

5. I have heard the learned advocates appearing for the parties. The respondents have produced material on record to establish that in the Mental Hospital at Ahmedabad, at the relevant time in the year 1973, pay-scale prescribed to the post of Linen Keeper is that of Rs.160-225 and the higher pay-scale of Rs.200-340 was prescribed for the post of Senior Linen Keeper. It is not in dispute that the petitioner was appointed to the post of Linen Keeper and not to the post of Senior Linen Keeper. The Government counsel has also made available the extracts of the relevant pay rules prevailing at the relevant time. From the said documents also, it is not in doubt that the correct scale of pay prescribed for the post of Linen Keeper is that of Rs.160-225. The learned advocate for the petitioner was also given sufficient opportunity to produce material to rebut the assertions of the learned AGP. He has fairly conceded that the petitioner is not in possession of any documentary evidence to rebut the averments of the respondents and to establish that the pay-scale for the post of Linen Keeper in the Mental Hospital, Ahmedabad was that of Rs.200-340 in the year 1973 when the petitioner was appointed to the said post. In this view of the matter, the decision of the Government to correct the pay-scale of the petitioner which was mistakenly given to her cannot be interfered with. I do not find any illegality committed by the respondents in ordering the correction of pay fixation of the petitioner. The consequent corrections in the subsequent pay fixation also therefore, must be upheld. The petitioner's challenge to the impugned orders at Annexure E and L by which her pay fixation is corrected

therefore fails.

6. The question of recovery stands on a different footing. In the case of Union of India v. Rekha Majhi, AIR 2000 SC 1562, the Hon'ble Supreme Court held that when dearness relief on pension was not payable to the widow of the deceased, but was paid for a period between 26.1.87 to 25.1.94 and that the payment was made voluntarily by conscious decision of the authorities, the recovery of the excess amount paid was not justified. In the decision in Sahib Ram v. State of Haryana & ors., 1995 Supp. (1) SCC 18, the Hon'ble Supreme Court though finding that the Government servant was not entitled to the benefit of relaxation and the consequent upgraded pay-scale since he did not possess the requisite educational qualification, held that the upgraded pay-scale was given to him on wrong construction of the relevant orders by the authority concerned without any misrepresentation by the employee and in such circumstances, recovery of the payment already made was not permitted. In the case of Nand Kishore Sharma v. State of Bihar, 1995 Supp (3) SCC 722 also when the Hon'ble Supreme Court found that the excess payment was sought to be recovered by the Government, it was found in the facts of the case that the Government could not have revised the decision without affording prior opportunity and hence though withdrawal of the revised pay-scale was upheld, recovery of the amount already paid was quashed.

7. In the present case also, I find that the petitioner was granted the higher pay-scale albeit mistakenly by the respondents without there being any misrepresentation on the part of the petitioner. It is not even the case of the respondents that the higher scale of Rs.200-340 was granted to the petitioner on account of any misrepresentation or any other action on the part of the petitioner. Admittedly, it was the mistake of the Government to fix the pay of the petitioner in the higher scale to which she was not entitled to. In that view of the matter, it would be unjust and improper in the present case to permit the respondents to effect recovery of the excess payment made mechanically 30 years back. It would be unjust and inequitable to permit the respondents to recover the excess payment made at such a distant point of time especially in view of the fact that the petitioner was in no manner responsible for the excess payment having been made.

8. In the result, therefore, though the correction of the pay-fixation carried out by the respondent is

upheld, any recovery pursuant to the said order is quashed. The petition is accordingly allowed in part. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)